

APPEAL NO. 031852  
FILED SEPTEMBER 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 10, 2003. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter and that claimant permanently lost entitlement to SIBs. Claimant appealed these determinations on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends that the hearing officer abused her discretion in failing to admit Claimant's Exhibits Nos. 14, 16, and 17. At the hearing, carrier objected to Claimant's Exhibits Nos. 14, 16, and 17 on the ground that claimant did not timely exchange them. Carrier said it did not receive these exhibits until the date of the hearing. Claimant said he tried to obtain the exhibits by requesting them but that he was told he had to come get the exhibits in person and was not able to do so. Claimant said he could not get these medical documents earlier because he has been having complications from his injury. He said he obtained the documents "last month." Claimant asserted that carrier already had the documents, but offered no documentary evidence to support this contention. Because the hearing officer could find that claimant did not timely exchange the documents, the hearing officer did not abuse her discretion in excluding them. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13 (Rule 142.13)). We note that even had the documents been erroneously excluded, there has been no showing that any error was reasonably calculated to cause and probably did cause the rendition of an improper decision. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Claimant complains that the carrier's evidence was outdated. However, the report from Dr. C was dated only a few months before the qualifying period. We perceive no reversible error in this regard.

Claimant contends that he was unable to obtain a narrative explaining why he was unable to work because carrier would not pay for treatment. However, we note that by January 2001, claimant was able to obtain a report from Dr. S saying that he was "disabled." Nevertheless, this report does not specifically explain why claimant had no ability to work during the qualifying period in question. The hearing officer could find from the evidence that claimant failed to produce a narrative report from a doctor that specifically explains how the injury caused a total inability to work during the qualifying period. Further, in a record dated a few months before the filing period, claimant's surgeon indicated that claimant could do at least light-duty work. Claimant contends that he was in good faith because he was employed during the qualifying period.

However, even if claimant's employer had held open his position, claimant did not work during the qualifying period. Therefore, he did not meet the requirements of Rule 130.102(d)(1).

We have reviewed the complained-of determinations regarding good faith, SIBs entitlement, and permanent loss of entitlement and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. In Texas Workers' Compensation Commission Appeal No. 000893, decided June 12, 2000, the Appeals Panel affirmed the hearing officer's determination that claimant was not entitled to first and second quarter SIBs. In Texas Workers' Compensation Commission Appeal No. 001537, decided August 17, 2000, the Appeals Panel affirmed the hearing officer's determination that claimant was not entitled to third quarter SIBs. Section 408.146(c) states that, notwithstanding any other provision of this section, an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury. We conclude that the appealed determinations regarding good faith, SIBs entitlement, and permanent loss of entitlement are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Edward Vilano  
Appeals Judge